IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,	)	
	)	
vs.	)	Criminal No. 2:15-CR-766-RMG
	)	
Sheldon Bennett,	)	17 CRIM 041
	)	
Defendant.	)	**ORDER**
	)	
	)	

This matter comes before the Court on Defendant's motion challenging venue in the District of South Carolina under Rule 18 of the Federal Rules of Criminal Procedure, and seeking a change in venue on the basis of inconvenience under Rule 21(b) of the Federal Rules of Criminal Procedure. (Dkt. No. 46). The Government has filed a memorandum in opposition to the motion and Defendant has filed a reply. (Dkt. Nos. 48, 49). For reasons set forth below, the Court denies Defendant's motion asserting improper venue under Rule 18 and grants Defendant's motion to transfer venue to the Southern District of New York under Rule 21(b).

Factual Background

Defendant was indicted in the District of South Carolina on November 9, 2015 on charges that he had submitted a false statement and a false document in an application for a United States passport. (Dkt. No. 1). The Defendant submitted the challenged application and supporting document at the Church Street Station Post Office in Manhattan, New York, which lies in the Southern District of New York. (Dkt. No. 48 at 3). A Passport Application Acceptance Agent of the United States Postal Service physically accepted the application from

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Defendant in New York. (*Id.* at 4). The passport application was initially processed by Citibank as a "lockbox provider" for the State Department. (*Id.* at 3). The application was then routed by Citibank to the Charleston Passport Center (CPC), a national processing center located in the Charleston Division of the District of South Carolina. (*Id.*). A Passport Specialist and a Fraud Prevention Manager at CPC conducted an initial review of Defendant's passport application.[1] (*Id.* at 4). The matter was thereafter referred by the CPC staff for further investigation to the State Department's Diplomatic Security Service "New York Field Office," which is located in Fort Lee, New Jersey in the District of New Jersey. (*Id.*).[2] After a decision to prosecute was made, the matter was referred to the United States Attorney's Office in the District of South Carolina, and a Federal Grand Jury sitting in the Charleston Division of the District of South Carolina handed down the aforementioned indictment of Defendant. (Dkt. No. 1).

Defendant resides in Brooklyn, New York, which lies in the Eastern District of New York. He asserts that his possible witnesses include his mother, a sister, and two brothers, all of whom reside in the Eastern District of New York. (Dkt. No. 46 at 1). According to his financial affidavit filed to support the appointment of the Federal Public Defender as his counsel, Defendant indicated that he works at the Tropical Twist, a business in Brooklyn, New York, where he appears to earn a minimum wage salary. (Dkt. No. 17).

Defendant argues that but for his visit to South Carolina to be arraigned, he has never stepped foot in the state or taken any intentional action to have contact in South Carolina. (Dkt.

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[1] The Fraud Prevention Manager involved in the initial investigation of Defendant at the CPC has since moved to Seattle, Washington, which lies in the Western District of Washington.

[2] Fort Lee, New Jersey lies adjacent to the George Washington Bridge, which connects New Jersey to Manhattan.

No. 46 at 1). It is uncontested, however, that Defendant's passport application was forwarded to to the CPC in the District of South Carolina by Citibank for initial processing, and it is in South Carolina where the Defendant's alleged fraud was initially suspected and investigated by the Government.

Legal Standard

A defendant has the right to be tried in a district where his offense was committed. U.S. Const., Art. III, § 2, Cl. 3; Fed. R. Crim. P. 18. When an offense is committed in more than one district, venue lies "in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a). For a false statement crime, such as 18 U.S.C. § 1001 under which Defendant is being prosecuted, venue is proper in any district where the false statement was submitted, filed or received. *United States v. Ringer*, 300 F.3d 788, 791 (7th Cir. 2002).

A case may be transferred from a district in which there is venue to another district in which there is venue "for the convenience of the parties, any victim, or the witnesses, or in the interest of justice." Fed. R. Crim. P. 21(b). As the Supreme Court established in *Platt v. Minnesota Min. & Mfg. Co.*, 376 U.S. 240, 243-44 (1964), a district court considering a motion to transfer venue for inconvenience should consider the following factors:

1. Location of defendant;
2. Location of possible witnesses;
3. Location of events likely to be in issue;
4. Location of documents and records likely to be involved;
5. Disruption of defendant's business unless the case is transferred;
6. Expense to the parties;

7. Location of counsel;

8. Relative accessibility of the place of trial;

9. Docket condition of each district or division involved; and

10. Any other elements which might affect transfer.

Discussion

The Government persuasively argues that the charged offenses were continuing in nature and that they occurred in multiple districts, including the District of South Carolina. The initial processing of the challenged passport application occurred in South Carolina and the early stages of the fraud investigation were conducted in South Carolina. The challenged application was initially filed and submitted in the Southern District of New York, where venue would have also been proper. Since venue was proper in the District of South Carolina, the Court denies Defendant's motion challenging venue under Rule 18 of the Federal Rules of Criminal Procedure.

Defendant's arguments under Rule 21(b), however, have substantially more merit. Only one of the potential witnesses with material information to offer, a CPC Passport Specialist, still resides in South Carolina. (Dkt. No. 48 at 4).[3] On the other hand, three of the Government's witnesses, the Defendant, and four defense witnesses reside in or around the Southern District of New York. (Dkt. Nos. 46 at 1; 48 at 4). Additionally, trial of this case in South Carolina would impose a great financial burden on Defendant and his possible witnesses, and transfer to the

[3] The Government's brief makes reference to a Special Agent of the Diplomatic Security Service based in Charleston as a potential witness, but the summary of the investigation provided in the Government's brief references only the Passport Specialist and the Fraud Prevention Manager at CPC (now residing in Seattle, Washington) as being involved in the Charleston, South Carolina portion of the investigation of Defendant. (Dkt. No. 48 at 4).

Southern District of New York would have a *de minimis* financial impact on the Government. Furthermore, while the relevant documents are presently located in South Carolina, the Government acknowledges that transfer of the records to the United States Attorney's Office in the Southern District of New York would hardly be burdensome.

In short, after carefully weighing the various *Platt* factors and the standards set forth in Rule 21(b), the Court finds that the interests of justice and convenience are best served by transfer of this case to the Southern District of New York. The Court notes that it reached a similar conclusion in a factually similar recent decision. *See United States v. Suazo*, C.A. No. 2:15-228-DCN (D.S.C. 2015). Therefore, the Defendant's motion to transfer this case to the Southern District of New York pursuant to Fed. R. Crim. P. 21(b) is granted.

Conclusion

Defendant's motion to change venue (Dkt. No. 46) is granted in part and denied in part. The Court denies Defendant's motion challenging venue in South Carolina pursuant to Rule 18 of the Federal Rules of Criminal Procedure. The Court grants Defendant's motion to transfer this case to the Southern District of New York pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Judge

January 4, 2017
Charleston, South Carolina